(30,704)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 739

D. B. ROBERTSON, APPELLANT,

vs.

RAILROAD LABOR BOARD

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 16, 1925

[fol. 1-3] CAPTION—Omitted

[fol. 4] **IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

RAILROAD LABOR BOARD, Petitioner,

vs.

D. B. ROBERTSON, Respondent

PETITION FOR AN ORDER REQUIRING RESPONDENT TO ATTEND, TO TESTIFY, AND TO GIVE EVIDENCE BEFORE THE RAILROAD LABOR BOARD

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The Railroad Labor Board, the above named petitioner, brings this its petition against D. B. Robertson, a citizen and inhabitant of the city of Cleveland, state and northern district of Ohio, the above named respondent, and thereupon complaining says:

1. That your petitioner is an administrative tribunal organized and existing under and by virtue of the Transportaion Act, 1920, approved February 28, 1920, as amended by act of June 5, 1920; that by section 307 of said act it is provided that the Railroad Labor Board, upon its own motion, may take jurisdiction of a dispute be-
[fol. 5] tween railroads operating in interstate commerce and the employes of said roads relative to wages, if said Railroad Labor Board "is of the opinion that the dispute is likely substantially to interrupt commerce," such dispute not having been decided in conference between the representatives of such railroad and the representatives of the employes thereof.

2. That prior to May 14, 1924, disputes existed between the following named railroads operating in interstate commerce and subject to the Interstate Commerce Act, to-wit: Atchison, Topeka & Santa Fe Railway Company (Including Eastern, Western and Coast Lines); Gulf, Colorado & Santa Fe Railway Company; Pan Handle & Santa Fe Railway Company; Belt Railway Company of Chicago; Chicago & Eastern Illinois Railway Company; Chicago & Western Indiana Railroad Company; Chicago & North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Great Western Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Terre Haute & Southeastern Railway Company; Chicago, Milwaukee & Gary Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Colorado & Southern Railway Company; Davenport, Rock Island & Northwestern Railway Company; Des Moines Union Railway Company; Iowa Transfer Railway Company; El Paso & Southwestern

System; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company; El Paso & Southwestern Railroad Company of Texas; El Paso & Northeastern Railroad; Fort Worth & Denver City Railway Company; Wichita Valley Railway Company; Great Northern Railway; Gulf Coast Lines; New Orleans, Texas & Mexico Railway Company (Engineers only); St. Louis, Brownsville & Mexico Railway Company (Engineers and firemen); Beaumont, [fol. 6] Sour Lake & Western Railway Company (Engineers only); New Iberia & Northern Railroad Company (Engineers only); Orange & Northwestern Railroad Company (Engineers only); Houston Belt & Terminal Railway Company; Illinois Central Railroad Company; Yazoo & Mississippi Valley Railroad Company; Kansas City Southern Railway Company; Texarkana & Ft. Smith Railway Company; Kansas City Terminal Railway Company; Minneapolis, St. Paul & Saulte Ste. Marie Railway Company; Duluth, South Shore & Atlantic Railway Company; Mineral Range Railroad Company; Minnesota Transfer Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Missouri Pacific Railway Company; Northern Pacific Railway Company; Peoria & Pekin Union Railway Company; St. Joseph Belt Railway Company; St. Paul Bridge & Terminal Railway Company; St. Louis-San Francisco Railway Company; St. Louis, San Francisco & Texas Railway Company; Paris & Great Northern Railroad Company; Ft. Worth & Rio Grande Railway Company; Brownwood North & South Railway Company; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; Valley Terminal Company; Gray's point Terminal Railway Company; Paragould Southeastern Railway Company; Central Arkansas & Eastern Railroad Company; Pine Bluff Arkansas River Railway; Stephenville North & South Texas Railway Company; Shreveport Bridge & Terminal Company; Dallas Terminal Railway & Union Depot Company; San Antonio & Aransas Pass Railway Company; Southern Pacific Company (Pacific System); Southern Pacific Lines in Texas & Louisiana; Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad [fol. 7] Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Iberia & Vermillion Railroad Company; Houston & Texas Central Railroad Company; Houston East & West Texas Railroad Company; Houston & Shreveport Railroad Company; Spokane, Portland & Seattle Railway; Oregon Trunk Railway; Oregon Electric Railway; Terminal Railroad Association of St. Louis; East St. Louis Connecting Railway; St. Louis Merchants' Bridge Terminal Railway; St. Louis Transfer Railway; Texas & Pacific Railway; Trans-Mississippi Terminal Railroad Company; Trinity & Brazos Valley Railway Company; Union Pacific System; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon-Washington Railroad & Navigation Company; Los Angeles & Salt Lake Railroad Company; St. Joseph & Grand Island Railway Company; Ogden Union Railway Company; Union Railway Company (Memphis, Tennessee); Union Stock Yards Company of Omaha

(Limited); Western Pacific Railroad; Wabash Railroad, and their respective employes, to-wit: their respective locomotive engineers and locomotive firemen and enginemen, represented in each such dispute by the Brotherhoods of Locomotive Engineers and of Locomotive Firemen and Enginemen, which said disputes related to wages and salaries of said employes, and rules and working conditions, none of said disputes having been decided in conference between representatives of said railroads and of said employes or submitted to any Railroad Board of Labor Adjustment established by agreement between any of said carriers, either individually, as a group or as a whole, and any of said employes or organization or group of organizations thereof; that thereafter, on May 14, 1924, said Railroad Labor Board assumed jurisdiction of said disputes and consolidated the same for the purpose of hearing under the name and style [fol. 8] of Atchison, Topeka & Santa Fe Railway (Eastern, Western and Coast Lines), et al., vs. Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Docket No. 4055, which said order of May 14, 1924, whereby your petitioner assumed jurisdiction of said disputes, was as follows:

"The Board is advised that on or about January 1, 1924, the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen presented requests for increase in rates of pay to the carriers following: (Here being set forth the names of the carriers hereinbefore set forth.)

Concurrent therewith the above Western Railroads presented requests to the representatives of the employes for relief from alleged restrictive and burdensome rules governing working conditions.

Subsequent thereto conferences were arranged between the duly authorized representatives of the interested parties. These conferences continued until May 12, 1924, at which time the conferences terminated without agreement having been reached. In view of these circumstances, the Board has reason to believe that a dispute exists which is likely to substantially interrupt commerce. The Board therefore decides to exercise its authority as set forth in the Transportation Act, 1920, and hereby orders the parties directly involved to attend a hearing which is set for June 3, 1924, at ten o'clock a. m., Daylight Saving Time, Transportation Building, Chicago, unless in the meantime a settlement is reached. Pending hearing and decision thereon both parties are directed to maintain status quo."

3. That thereafter the above mentioned consolidated disputes came on for hearing, from time to time, before your petitioner, and your petitioner proceeded to hear the testimony of divers witnesses and to receive in evidence divers exhibits, all of which will more fully appear by reference to Exhibits "A" and "B," attached hereto, made a part hereof and incorporated herein as if set forth herein [fol. 9] at length, specific reference being hereby made thereto, which said Exhibit "A" consists of the record of proceedings and testimony so taken by your petitioner and comprises a total of 941 typewritten

pages, and said Exhibit "B" consists of a true copy of the exhibits so received by your petitioner and comprises a total of 1,067 typewritten pages.

4. That thereafter your petitioner did, by lawful subpœna, duly served, demand the presence before your petitioner, for the purpose of testifying and giving evidence in said consolidated disputes, of 102 witnesses, including the respondent, which said witnesses were all of them officers or agents of said Brotherhoods or employes of one of the carriers aforesaid.

5. That thereafter said 102 witnesses, including respondent, appeared specially by attorney before your petitioner and declined to testify or to give evidence on grounds set forth at length in written documents filed with your petitioner (Exhibit "B," page 107), one of said grounds being that your petitioner had no jurisdiction to hear said disputes.

6. That thereafter, on Juy 25, 1924, your petitioner entered an order overruling and disallowing said objections (Exhibit "B," page 109), which said order, in part, is as follows:

"In this particular case, the Board's opinion that a substantial interruption of traffic was likely to result from the controversy was based upon the amplest grounds, a portion of which will be briefly mentioned.

1. The questions in dispute affect the wages and working conditions of the engineers and firemen on 43 of the principal railroads of the West, Southwest, and Northwest, comprising an overwhelming per cent of the mileage in that territory.

2. The negotiation of these questions was by mutual agreement taken up between the carriers represented by the Conference Com- [fol. 10] mittee of Managers, western Railways, and the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. After some weeks of unsucessful efforts to reach an agreement, the conference was terminated without agreement and the representatives adjourned.

Thereupon, the managers' committee notified the Board of the failure to settle the disputes by agreement.

3. Knowing that the same managers' committee had recently negotiated a settlement of analogous disputes concerning wages with the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, the Board had reason to believe that their negotiations with the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen had been in good faith and with a genuine desire to adjust differences, and that there must necessarily exist matters of sharp dispute.

4. The Board was aware that the Brotherhood of Locomotive Engineers and Brotherhod of Locomotive Firemen and Enginemen, when a similar dispute about wages and working conditions on the

New York, New Haven & Hartford Railroad had resulted in disagreement, had recently taken a strike vote. Since then these two organizations have taken a strike vote on the Buffalo, Rochester and Pittsburg Railroad to force a settlement of a similar dispute affecting wages and rules. The Board is therefore justified in the conclusion that it is the policy of these two organizations to promptly resort to a strike upon the failure to reach an agreement relative to these wage and rules controversies.

Moreover, the Board was also mindful of the fact that these same two organizations ordered a strike a few months ago on the Virginian Railway on account of unsettled disputes, without first bringing said disputes to the Board. After the strike in this instance was effective, the organizations did, however, appear before the Board and present their contentions in connection with the matters in dispute.

These occurrences are reasonably construed to signify the policy of these organizations in regard to the interruption of traffic by strikes.

[fol. 11] 5. The Board is necessarily cognizant of the fact that said two organizations comprise a very great percentage of these two classes of employees essential to the operation of trains and that their possession of large strike funds would increase their ability to make an interruption of traffic substantial within the meaning of the statute.

6. The organizations objected to the Board's assumption of jurisdiction in this case on the ground that negotiations were being resumed with the managements of the individual railroads. The Board therefore postponed the hearing to give ample opportunity for further negotiations of any character. The carriers, however, took the position that the managers' committee represented each individual road and would negotiate with the local chairman of the organizations, if desired, and that they did not see fit to abandon the method of negotiation already adopted by agreement.

7. The Board can not overlook the fact that the carriers affected by this situation serve the West and Northwest whose people are just now emerging from a severe agricultural depression and who would suffer disastrous results from a railroad strike.

Furthermore, it must be remembered that no injustice can be done either to the carriers or the employees by a public hearing of the facts surrounding these disputes before a tribunal composed of representatives of the carriers, the employees, and the public. Such a hearing will in all probability result in an adjustment of the controversy. At any rate, it will enlighten the public as to the issues involved and this is one of the main purposes that was contemplated by Congress when the Tranportation Act was passed.

On the other hand, the finding of the Board will not be legally obligatory upon either party.

In view of all these considerations, the Board can not accept the suggestion that its action was premature and that either a carrier or the employees have the right to split hairs with the Board as to the exact minute when it should exercise its statutory discretion in the assumption of jurisdiction of a dispute in the interest of the public welfare and for the well-being of the parties themselves."

[fol. 12] 7. That thereafter your petitioner did cause to be served upon the respondent another and different subpœna commanding him to be and appear before your petitioner at its offices in the Transportation Building, City of Chicago, Northern District of Illinois, Eastern Division, on the 11th day of September, A. D. 1924, at ten o'clock a. m., there to attend, to testify and to give evidence in said disputes so consolidated as aforesaid in Docket No. 4055, which said subpœna was duly served upon respondent by the United States Marshal for the Northern District of Ohio; that on said last mentioned date the respondent appeared specially by his attorney and again notified your petitioner that he declined to appear and testify in answer to said subpœna, and said respondent further declined to admit, or to submit to, the jurisdiction assumed as aforesaid by your petitioner (Exhibit "A," pages 929-938), all of which matters and things set forth and alleged in the paragraphs hereof numbered 2 to 7 inclusive will more fully appear by the transcript of the proceedings in said disputes consolidated in Docket No. 4055, which said copy of the said transcript is attached hereto as Exhibits "A" and "B" as aforesaid.

8. That in pursuance of its duty under the law, it was and is incumbent upon your petitioner, to enable it fully to perform the functions for which it was created, to procure the attendance, testimony, and evidence from the respondent which he has so declined to give, which said evidence and testimony is relevant and material to matters involved in said disputes, to-wit, to the relation between wages and cost of living, the hazards of the employment, the training and skill required, the degree of responsibility, the character and regularity of employment and any inequalities of increases in [fol. 13] wages or of treatment which may have resulted from previous wage orders or adjustments.

Wherefore, your petitioner prays that an order or orders may be made requiring the attendance before your petitioner of said witness, the respondent hereto, at a time and place to be fixed by said Railroad Labor Board, and the making by him of a full answer to any and all pertinent questions relating to the subject-matter aforesaid which said Railroad Labor Board may require him to answer, and for such other and further relief as may be just and proper in the premises.

Railroad Labor Board, by Ben W. Hooper, Chairman Railroad Labor Board. Edwin A. Olson, United States Attorney. Weymouth Kirkland, Special Assistant to the Attorney General.

[fols. 14 & 15] Jurat showing the foregoing was duly sworn to by Ben W. Hooper omitted in printing.

[fols. 16 & 17] IN UNITED STATES DISTRICT COURT

SUMMONS AND SHERIFF'S RETURN—Filed Oct. 4, 1924

The President of the United States of America to D. B. Robertson, 901 Guardian Bldg., Cleveland, Ohio, Greeting:

We command you and every of you, That you be and appear before our Judges of our District Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on or before the twentieth day after service of this writ, exclusive of the day of service, to answer or otherwise defend against a certain bill in equity this day filed by Railroad Labor Board, in the Clerk's office of said Court, in the City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Ohio to Execute.

Witness the Honorable George A. Carpenter, Judge of the District Court of the United States of America, for the Northern District of Illinois, at Chicago aforesaid, this 1st day of October, in the year of our Lord One Thousand Nine Hundred and 24, and of our Independence the 149th year.

John H. R. Jamar, Clerk. (Seal.)

Memorandum

The defendant is required to file his answer or other defense in the Clerk's office on or before the twentieth day after service hereof upon him, excluding the day of service; otherwise the said bill may be taken pro confesso.

John H. R. Jamar, Clerk.

[Endorsed:] No. 4282. Marshal's No. —. District Court of the United States, Northern District of Illinois. Railroad Labor Board vs. D. B. Robertson. Chancery Subpœna. Filed Oct. 4, 1924, at — o'clock —M. John H. R. Jamar, Clerk. Edwin A. Olsen, Weymouth Kirkland, complainant's solicitor.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

U. S. Marshal's Return

Received this writ at Cleveland, Ohio, Oct. 3, 1924, and on Oct. 3, 1924, at Cleveland, Ohio, I served the within-named D. B. Robert-

son personally a true and certified copy hereof with all the endorsements thereon.

Geo. A. Stauffer, U. S. Marshal, by James W. Laymon, Deputy.

Marshal's Fees:

Travel	.06
Service	2.00
	$2.06

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO QUASH SERVICE—Filed Oct. 16, 1924

Now comes the above named respondent, D. B. Robertson, by Donald R. Richberg, his attorney, and appearing specially for the purpose of this motion and for no other purpose, and not in any way acceding or consenting to the jurisdiction of the court, except so far as may be necessary for the purposes of this motion, and moves the court to quash the pretended service of an alleged summons in this case as to himself, the only party named as a respondent, for the following reasons:

[fol. 18½] 1. That the respondent is an inhabitant of the City of Cleveland, situated in the Northern District of Ohio, and not subject to the jurisdiction of the District Court of the United States of America for the Northern District of Illinois, in which the above entitled proceeding was commenced and out of which the alleged summons was issued.

2. That the pretended service of the alleged summons in the above entitled proceeding was executed by the Marshal of the Northern District of Ohio, who had no legal authority to execute service of said alleged summons.

3. That the District Court of the United States for the Northern District of Illinois is wholly without authority to subject the said respondent, D. B. Robertson, to the jurisdiction invoked in the above entitled proceeding, or to issue and command the execution of process against him, or the service of a summons upon him, or to require him to answer to the petition filed herein.

[fol. 19] And for the reasons above set forth, the above named respondent specially appearing moves the court to vacate and hold the pretended service of the alleged summons in this proceeding for naught; and prays the judgment of this court whether he shall

be compelled to appear herein or answer thereto because of the said pretended service of said alleged summons, by reason of which no legal service of a lawful summons has been had, nor has the respondent accepted service herein, nor has he voluntarily appeared, nor has he waived due service of process upon him.

Donald R. Richberg, Solicitor for Respondent, D. B. Robertson.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION TO QUASH—Nov. 6, 1924

This cause having heretofore come on to be heard upon motion of the Respondent, D. B. Robertson, to quash the service of summons in the above entitled cause, and the Court having heard arguments of counsel and being now fully advised in the premises,

It is ordered by the Court that said motion be and it is hereby denied, to which ruling said respondent excepts.

It is further ordered by the Court that the Respondent have ten days in which to plead or answer to the petition heretofore filed herein.

[fol. 21] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION AND JUDGMENT—Nov. 6, 1924

These are petitions under Section 310 of the Transportation Act, 1920, (41 Stat., 472) to require the attendance of the respondents as witnesses before the Railroad Labor Board.

In case No. 4282 the respondent is a citizen and inhabitant of Cleveland in the northern district of Ohio. In case No. 4326 the respondent is a citizen and inhabitant of Chicago in the eastern division of the northern district of Illinois. In other respects the averments of the petition are the same.

It is charged in substance that prior to May 14, 1924, disputes existed between certain railroad interstate carriers named in the petitions and locomotive engineers, firemen and enginemen who [fol. 22] were employes of such carriers; that the employes were represented in such disputes by the Brotherhoods of Locomotive Engineers, and of Locomotive Firemen and Enginemen; that such disputes related to wages and salaries of said employes and rules and working conditions; that none of said disputes had been decided in

conference between representatives of the railroads and other employes or submitted to any railroad board of labor adjustment provided for by section 302 of the Transportation Act; that on May 14, 1924, the Railroad Labor Board assumed jurisdiction of said disputes and consolidated the same for hearing as docket No. 4055. Atchison, Topeka and Santa Fe Railway, et al., v. Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen; that the order assuming jurisdiction by the board was as follows:

"The Board is advised that on or about January 1, 1924, the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen presented requests for increase in rates of pay to the carriers following: (Here being set for the names of the carriers set forth in the petitions.)

"Concurrent therewith the above Western Railroads presented requests to the representatives of the employes for relief from alleged restrictive and burdensome rules governing working conditions.

"Subsequent thereto conferences were arranged between the duly authorized representatives of the intersted parties. These conferences continued until May 12, 1924, at which time the conferences terminated without agreement having been reached. In view of these circumstances, the Board has reason to believe that a dispute exists which is likely to substantially interrupt commerce. The Board therefore decides to exercise its authority as set forth in the Transportation Act, 1920, and hereby orders the parties directly involved to attend a hearing which is set for June 3, 1924, at ten o'clock a. m., daylight saving time, Transportation Building, Chicago, unless in the meantime a settlement is reached. Pending hearing and decision thereon both parties are directed to maintain status quo."

That the consolidated disputes were heard from time to time by the Board and evidence taken, a copy of which proceedings is attached to the petition and contains more than two thousand typewritten pages; that subpœnas were duly served upon one hundred [fol. 23] and two witnesses who were all officers or agents of the brotherhoods or employes of one of the carriers, including the respondents, demanding their presence before the Board for the purpose of giving evidence in said consolidated disputes; that said witnesses, including respondents, appeared specially by attorney and refused to give evidence on divers grounds, one of which was that the petitioner had no jurisdiction to hear the disputes; that the Board overruled the objections and made an order in part as follows:

"In this particular case, the Board's opinion that a substantial interruption of traffic was likely to result from the controversy was based upon the amplest grounds, a portion of which will be briefly mentioned.

"1. The questions in dispute affect the wages and working conditions of the engineers and firemen on 43 of the principal rail-

roads of the West, Southwest, and Northwest, comprising an overwhelming per cent of the mileage in that territory.

"2. The negotiation of these questions was by mutual agreement taken up between the carriers represented by the Conference Committee of Managers, Western Railways, and the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. After some weeks of unsuccessful efforts to reach an agreement, the conference was terminated without agreement and the representatives adjourned.

"Thereupon, the managers' committee notified the Board of the failure to settle the disputes by agreement.

"3. Knowing that the same managers' committee had recently negotiated a settlement of analogous disputes concerning wages with the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, the Board had reason to believe that their negotiations with the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen had been in good faith and with a genuine desire to adjust differences, and that there must necessarily exist matters of sharp dispute.

"4. The Board was aware that the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen, when a similar dispute about wages and working conditions on the New York, New Haven & Hartford Railroad had resulted in disagreement, had recently taken a strike vote. Since then these two organizations have taken a strike vote on the Buffalo, Rochester and Pittsburg Railroad to force a settlement of a similar dispute affecting wages and rules. The Board is therefore justified in the conclusion that it is the policy of these two organizations to promptly resort to a strike upon the failure to reach an agreement relative to these wage and rules controversies.

"Moreover, the Board was also mindful of the fact that these same two organizations ordered a strike a few months ago on the Virginian Railway on account of unsettled disputes, without first bringing said disputes to the Board. After the strike in this instance was effective, the organizations did, however, appear before the Board and present their contentions in connection with the matters in dispute.

"These occurrences are reasonably construed to signify the policy of these organizations in regard to the interruption of traffic by strikes.

[fol. 24] "5. The Board is necessarily cognizant of the fact that said two organizations comprise a very great percentage of these two classes of employes essential to the operation of trains and that their possession of large strike funds would increase their ability to make an interruption of traffic substantial within the meaning of the statute.

"6. The organizations objected to the Board's assumption of jurisdiction in this case on the ground that negotiations were being re-

sumed with the managements of the individual railroads. The Board therefore postponed the hearing to give ample opportunity for further negotiations of any character. The carriers, however, took the position that the managers' committee represented each individual road and would negotiate with the local chairman of the organizations, if desired, and that they did not see fit to abandon the method of negotiation already adopted by agreement.

"7. The Board cannot overlook the fact that the carriers affected by this situation serve the West and Northwestern whose people are just now emerging from a severe agricultural depression and who would suffer disastrous results from a railroad strike.

"Furthermore, it must be remembered that no injustice can be done either to the carriers or the employes by a public hearing of the facts surrounding these disputes before a tribunal composed of representatives of the carriers, the employes, and the public. Such a hearing will in all probability result in an adjustment of the controversy. At any rate, it will enlighten the public as to the issues involved and this is one of the main purposes that was contemplated by Congress when the Transportation Act was passed.

"On the other hand, the finding of the Board will not be legally obligatory upon either party.

"In view of all these considerations, the Board cannot accept the suggestion that its action was premature and that either a carrier or the employes have the right to split hairs with the Board as to the exact minute when it should exercise its statutory discretion in the assumption of jurisdiction of a dispute in the interest of the public welfare and for the well-being of the parties themselves."

That afterwards other subpœnas were served upon respondents returnable on September 11, 1924, at which time respondents, appearing specially by attorney, refused to attend and give evidence; that in pursuance of its duty it is incumbent upon the Board, in order to perform its functions, to procure evidence from the respondents, and that such evidence is material to the matters involved in said dispute.

The petitioners pray for orders in accordance with Section 310 of the Transportation Act, requiring the respondents to comply with the subpœnas and give evidence touching the matters in question.

In Case No. 4282, respondent appears specially and moves to quash the summons on the ground that as he is an inhabitant of the northern district of Ohio this suit may not be maintained against him here.

[fol. 25] In case No. 4326, respondent moves to dismiss the petition on the ground that the subpœna and these proceedings contravene the Third Article of the Constitution and the Fourth, Fifth and Tenth Amendments. As to Article III he asserts that this proceeding invokes the exercise of the judicial power in a proceeding not brought to enforce any legal rights or to provide redress or punish any legal wrongs, and is not a case or controversy within the meaning of the second section of Article III of the Constitution, to which alone the judicial power of the courts of the United States extends.

The pertinent parts of Section 310 of the Transportation Act are as follows:

"For the efficient administration of the functions vested in the Labor Board by this title, any member thereof may require, by subpœna issued and signed by himself, the attendance of any witness and the production of any book, paper, document, or other evidence from any place in the United States at any designated place of hearing, and the taking of a deposition before any designated person having power to administer oath. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed to by the deponent. Any member of the Labor Board may administer oaths and examine any witness. Any witness summoned before the board and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

"In case of failure to comply with any subpœna or in case of the contumacy of any witness appearing before the Labor Board, the board may invoke the aid of any United States district court. Such court may thereupon order the witness to comply with the requirements of such subpœna, or to give evidence touching the matter in question, as the case may be. Any failure to obey such order may be punished by such court as a contempt thereof."

Considering first the motion to quash in No. 4282, the only question, in view of the special appearance, is that of the right of the Labor Board to maintain this proceeding against a defendant in a district other than the one of which he is an inhabitant.

Section 51 of the Judicial Code provides that, except as provided in the six succeeding sections (none of which affects the question now under consideration) and except where diversity of citizenship is the ground of jurisdiction, no civil suit shall be brought in any district against any person in any other district than that whereof [fol. 26] he is an inhabitant. This general provision, of course, controls in the absence of specific legislation by Congress. Congress has the power, however, to vest a district court with jurisdiction as broad as the territorial limits of the United States. It is said in United States v. Union Pacific R. R. Co., 98 U. S. 569, 603:

"With the exception of the Supreme Court, the authority of Congress, in creating courts and conferring on them much or little of the judicial power of the United States, is unlimited by the Constitution."

The court in the same case further said:

"The same article declares, in sect. 1, that 'this power shall be vested in one supreme court and in such inferior courts as the Congress may, from time to time ordain.'

"The discretion, therefore, of Congress as to the number, the character, the territorial limits of the courts among which it shall distribute this judicial power, is unrestricted except as to the Su-

preme Court. On that court the same article of the Constitution confers a very limited original jurisdiction,—namely, 'in all cases affecting ambassadors, other public ministers, and consuls, and cases in which a State shall be a party,'—and an appellate jurisdiction in all the other cases to which this judicial power extends, with such exceptions and under such regulations as the Congress shall make."

Congress, in a number of instances, has created exceptions to the general provision of Section 51 of the Judicial Code and conferred upon the district courts jurisdiction over defendants who are not inhabitants of the district within which the suit is brought. Examples of this are the provisions of the Interstate Commerce Act (24 Stat. 363; 25 Stat. 856; 26 Stat. 743) and the Federal Trade Commission Act (38 Stat. 722) which authorize suits to require the attendance and testimony of witnesses from any place in the United States to be brought in the district courts of the United States within the jurisdiction of which the inquiry is carried on; the provisions of the Sherman Act (26 Stat. 209) and the Clayton Act (38 Stat. 736) authorizing the court to cause defendants to be summoned whether they reside in the district in which the court is held or not; and the Copyright Act (35 Stat. 1084) conferring jurisdiction to grant injunctions against parties anywhere in the United States and making such injunctions operative throughout the United States.

[fol. 27] Respondent in case No. 4282 presents by his motion the question of the construction of Section 310 of the Transportation Act. That the natural and usual significance of plain terms is to be adopted as the Legislative meaning in the absence of a clear showing that something else was meant, is an elementary rule of statutory constructions. (United States v. First National Bank, 234 U. S. 245, 258.)

In Dewey v. United States, 175 U. S. 510, 521, it was said:

"This court has nothing to do with questions of mere policy that may be supposed to underlie the action of Congress. What is termed the policy of the Government in reference to any particular subject of legislation, this court has said, 'is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes. Hadden v. The Colelctor, 5 Wall, 107, 111. Our province is to declare what the law is, and not, under the guise of interpretationer under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such. Here the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there in consequently no room for construction. Our duty is

to give effect to the will of Congress, as thus plainly expressed. United States v. Fisher, 2 Cranch, 358, 399; Lake County v. Rollins, 130 U. S. 662, 670."

The statement of the Supreme Court in Lake County v. Rollins, supra, (p. 669) is applicable here:

"The language of this section seems to be neither complicated nor doubtful; and we think it plain that what is meant was exactly what is said; no more and no less."

The terms of the statute invokes by the petitioner are clear and unambiguous. The statute provides that in case of failure to comply with any subpœna the board may invoke the aid of any United States District Court and that such court may thereupon order the witness to comply with the requirements of such subpœna, and that any failure to obey such order may be punished by such court as a contempt thereof.

[fol. 28] This court, in my opinion, has jurisdiction of the case, although respondent is not an inhabitant of this district.

The argument in support of the motion to dismiss in case No. 4326 centers around the contention that the case is not one within the meaning of Article III of the Constitution, and that, therefore, the judicial power is not capable of acting upon the question presented. If the contention of respondent is correct, there are few, if any, proceedings before the Labor Board in which the attendance and testimony of witnesses may be compelled and the section is practically nugatory, if not absolutely void.

It is well established that where a court is authorized to enter so-called judgments which it has no power to enforce or which are merely advisory to Congress or to some administrative department of the Government, such judgments cannot be deemed an exercise of judicial power. (La Abra Silver Mining Co. v. United States, 175 U. S. 423; In re Sanborn, 148 U. S. 222, 226; Gordon v. United States, 2 Wall., 561; 117 U. S. 697).

Congress has made no provision for the enforcement of the decisions of the Labor Board through the courts. The Supreme court in Penna. R. R. v. Labor Board, 261 U. S. 72, 79, said:

"The only sanction of its decision is to be the force of public opinion invoked by the fairness of a full hearing, the intrinsic justice of the conclusion, strengthened by the official prestige of the Board, and the full publication of the violation of such decision by any party to the proceeding. The evident thought of Congress in these provisions is that the economic interest of every member of the public in the undisturbed flow of interstate commerce and the acute inconvenience to which all must be subjected by an interruption caused by a serious and widespread labor dispute, fastens public attention closely on all the circumstances of the controversy and arouses public criticism of the side thought to be at fault. The function of the Labor Board is to direct that public criticism against the party who, it thinks, justly deserves it."

In view of the advisory character of the decisions of the Labor Board it is contended that the proceeding here to compel the attendance of witnesses is ancillary to a proceeding before the Board in which the order to be entered is not enforceable through the courts, and that, therefore, this proceeding is not a contention between [fol. 29] litigants brought before a court by regular proceedings for the protection or enforcement of rights or the prevention, redress or punishment of wrongs.

Reliance is placed by respondent upon Harriman v. Interstate Commerce Commission, 211 U. S. 407; Interstate Commerce Commission v. Brimson, 154 U. S. 447; In re Pacific Railway Commission, 32 Fed. 241 and Federal Trade Commission v. American Tobacco Co., 264 U. S. 298.

Whatever may have been the view of some of the inferior federal courts in the early decisions it is now firmly established that the process of the courts may be exercised, pursuant to authority of Congress, in aid of investigations by administrative bodies. In Interstate Commerce Commission v. Brimson, supra, it was said:

"Whether the Commission is entitled to the evidence it seeks, and whether the refusal of the witness to testify or produce books, papers, etc., in his possession, is or is not in violation of his duty or in derogation of the rights of the United States, seeking to execute a power expressly granted to Congress, are the distinct issues between that body and the witness. They are issues between the United States and those who dispute the validity of an act of Congress and seek to obstruct its enforcement. And these issues, made in the form prescribed by the act of Congress, are so presented that the judicial power is capable of acting on them.

"The question so presented is substantially, if not precisely, that which would arise if the witness was proceeded against by indictment under an act of Congress declaring it to be an offense against the United States for any one to refuse to testify before the Commission after being duly summoned, or to produce books, papers, etc., in his possession upon notice to do so, or imposing penalties for such refusal to testify or to produce the required books, papers, and documents. A prosecution for such offense or a proceeding by information to recover such penalties would have as its real and ultimate object to compel obedience to the rightful orders of the Commission, while it was exerting the powers given to it by Congress. And such is the sole object of the present direct proceeding. The United States asserts its right, under the Constitution and laws, to have these appellees answer the questions propounded to them by the Commission, and to produce specified books, papers, etc., in their possession or under their control. It insists that the evidence called for is material in the matter under investigation; that the subject of investigation is within legislative cognizance, and may be inquired of by any tribunal constituted by Congress for that purpose. The appellees deny that any such rights exist in the general government, or that they are under a legal duty, even if such evidence be important or vital in the enforcement of the Interstate Commerce

Act, to do what is required of them by the Commission. Thus has arisen a dispute involving rights or claims asserted by the respective parties to it. And the power to determine directly, and, as between the parties, finally, must reside somewhere. It cannot be that the general government, with all the power conferred upon it by the people of the United States, is helpless in such an emergency, and [fol. 30] is unable to provide some method, judicial in form, and direct in its operation, for the prompt and conclusive determination of this dispute."

In the Harriman case, supra, the power of the court to compel attendance and testimony of witnesses before the Interstate Commerce Commission in some of the proceedings before that Commission was recognized. It was there held that the statute, as it was then framed, did not cover the proceedings in which it was sought to require the evidence. The comment of the Supreme Court in the Harriman case in Smith v. Interstate Commerce Commission, 245 U. S. 41, 44, is applicable here:

"Appellant presses that case beyond its principle. And we may observe that Sec. 13 has been amended and broadened since the decision of that case.[1]

"The inquiry in the present case is more immediate to the function of the Commission than the inquiry in that and comes within Interstate Commerce Commission v. Chicago, R. I. & Pac. Ry., supra, where it was said, at p. 103: 'The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore are complex and difficult, the means of solving them are as great and adequate as can be provided.' And they must necessarily be expressed in generalities. A precise specification of powers might work a limitation and all not enumerated be asserted to be withheld."

The Interstate Commerce Commission and the Labor Board are administrative bodies. They do not exercise judicial power. The procedure before them up to the rendition of their decisions is substantially the same. Congress has provided for the enforcement of [fol. 31] the findings of the Interstate Commerce Commission through the courts. As to the Labor Board, in view of the limita-

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("[1] Prior to the decision Sec. 13 read as follows: 'Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.'

"After the decision the section was amended to read as follows: * * * 'and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act.'")

tion upon the power of the Government to compel men to work against their will, it has made no such provision. The purpose back of the Labor Board Act, as stated in Penna. Railroad Co. case, supra, as follows:

"The jurisdiction of the Board to direct the parties to do what it deems they should do is not to be limited by their constitutional or legal right to refuse to do it. Under the act there is no constraint upon them to do what the Board decides they should do except the moral constraint, already mentioned, of publication of its decision.

"* * * The statute does not require the Railway Company to recognize or to deal with, or confer with labor unions. It does not require employes to deal with their employers through their fellow employes. But we think it does vest the Labor Board with power to decide how such representatives ought to be chosen with a view to securing a satisfactory co-operation and leaves it to the two sides to accept or reject the decision. The statute provides the machinery for conferences, the hearings, the decisions and the moral sanction."

It is true that when the finding reached by a court is not enforceable by any process of execution issuing from the court, nor is made by statute the final and indisputable basis of action, either by a governmental department or by Congress, the rendition of such a finding does not involve the proper exercise of judicial power. Respondent, however, fails to differentiate between the proceedings before the Labor Board and the proceedings in court to compel the testimony. It does not follow that because the decision of the Board is not enforceable under the statute in the courts of the United States and is merely published in order to guide public opinion, the proceedings in court to compel evidence upon which to base the finding of the Board are advisory within the meaning of the cases above cited. The judgment of the court is binding upon the witness and that judgment under the statute may be enforced by the process of the court. If resort may not be had to the courts to assist administrative bodies to obtain evidence in matters under investigation by them, even though those investigations do not lead to an order enforceable in the courts, it would be impossible for the Government to perform its functions under the Constitution. Quoting again from the Brimson case, supra, (p. 465):

[fol. 32] "The inquiry whether a witness before the Commission is bound to answer a particular question propounded to him, or to produce books, papers, etc., in his possession and called for by that body, is one that cannot be committed to a subordinate administrative or executive tribunal for final determination. Such a body could not, under our system of government, and consistently with due process of law, be invested with authority to compel obedience *ot* its orders by a judgment of fine or imprisonment. Except in the particular instances enumerated in the Constitution, and considered in Anderson v. Dunn, 6 Wheat. 204, and in Kilbourn v. Thompson, 103 U. S. 168, 190 of the exercise by either house of Congress of its right to punish disorderly behavior upon the part of its members, and to compel the

attendance of witnesses, and the production of papers in election and impeachment cases, and in cases that may involve the existence of those bodies, the power to impose fine or imprisonment in order to compel the performance of a legal duty imposed by the United States, can only be exerted, under the law of the land, by a competent judicial tribunal having jurisdiction in the premises. See Whitcomb's Case, 120 Mass. 118, and authorities there cited."

In the case of Chapman, Petitioner, 166 U. S. 661, the Supreme Court dealt with the validity of Sections 102, 103 and 104 of the Revised Statutes, making it a misdemeanor for a witness to refuse to attend or answer questions before either house or any committee of either house of Congress. The court, sustaining those sections, said (p. 671):

"The history of Congressional investigations demonstrates the difficulties under which the two Houses have labored, respectively, in compelling unwilling witnesses to disclose facts deemed essential to taking definitive action, and we quite agree with Chief Justice Alvey, delivering the opinion of the Court of Appeals, 'that Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legitimate functions;' and that it was to effect this that the act of 1857 was passed. It was an act necessary and proper for carrying into execution the powers vested in Congress and in each House thereof."

And we must not lose sight of the declaration in the Brimson case, supra, that the exercise of judicial power in punishing a witness for refusal to attend and testify is substantially the same as that involved in proceedings to compel the attendance and testimony of a witness. (Interstate Commerce Commission v. Brimson, supra, p. 447, 477.)

Nor is the inquiry before the Labor Board under consideration here a fishing expedition into private affairs, as was held to be the case in Harriman v. Interstate Commerce Commission, supra, and [fol. 33] Federal Trade Commission v. American Tobacco Co., supra. A definite matter is under investigation by the Board. The issues are made up with the particularity and precision of a law suit between litigants in a court. The comment of the Supreme Court in the Chapman case, supra, is opposite:

"The questions were undoubtedly pertinent to the subject matter of the inquiry. The resolutions directed the committee to inquire 'whether any Senator has been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate.' What the Senate might or might not do upon the facts when ascertained, we cannot say, nor are we called upon to inquire whether such ventures might be defensible, as contended in argument, but it is plain that negative answers would have cleared that body of what the Senate regarded as offensive imputations, while

affirmative answers have led to further action on the part of the Senate within its constitutional powers."

The petition here presents the claim of a litigant, the Labor Board, to its right to the evidence essential to the specific investigation before it. That claim is brought before the court for determination by the regular proceedings which are established by law for the protection or enforcement of rights or the prevention, redress or punishment of wrongs. The judgment of the court, if one is entered upon the petition, is enforceable by process. The rendition of such a judgment in such a proceeding involves the proper exercise of the judicial power of the courts of the United States.

The motion to dismiss case No. 4326 is overruled.

James H. Wilkerson, United States District Judge.

[File endorsement omitted.]

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS PETITION—Filed Nov. 12, 1924

Now comes the above named respondent, D. B. Robertson, by Donald R. Richberg, his solicitor, and appearing specially for the purpose of this motion and for no other purpose and not waiving legal service of process upon him, but insisting that his motion heretofore made to quash the pretended service of an alleged summons in this case as to himself should have been granted and not denied, and not in any way acceding or consenting to the jurisdiction of the court, but acting in response to the order entered by the court on November 6th, 1924, requiring him to plead or answer within ten (10) days, moves the court to dismiss the petition filed herein upon the following grounds, viz:

[fol. 35] 1. That the petitioner has not in and by said petition made or stated such a case as entitled it in this court to any relief against the respondent as to the matters contained in said petition, or any of said matters.

2. That the respondent in refusing to comply with the so-called subpœna issued by the petitioner was protected in his right to refuse by the Fourth, Fifth and Tenth Amendments to the Constitution of the United States, and that he is protected against the order which the petitioner seeks to obtain from this court by said provisions of the Constitution of the United States.

3. That the petition filed in this proceeding invokes the exercise of the judicial power in a proceeding not brought to enforce any legal rights or to prevent, redress or punish any legal wrongs, and is

not a case or controversy within the meaning of the Second Section of Article III of the Constitution to which alone the judicial power of the courts of the United States extends.

4. That under the construction of those sections of the Interstate Commerce Act, commonly called the Transportation Act, upon which petitioner bases the prayer of its petition, that portion of said Act would be in violation of the Fourth, Fifth and Tenth Amendments, and the Third Article of the Constitution of the United States.

[fol. 36] Wherefore, the respondent prays the judgment of the court that he be dismissed with his costs in this behalf incurred.

Donald R. Richberg, Solicitor for Respondent, D. B. Robertson.

[File endorsement omitted.]

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION TO DISMISS AND ORDER THAT D. B. ROBERTSON APPEAR TO TESTIFY—Nov. 13, 1924

This cause coming on to be heard this 13th day of November, A. D. 1924, on motion of the respondent, heretofore filed, to dismiss the petition in the above entitled cause, both parties being present in court by their respective counsel, and the court having heard argument of counsel and being fully advised in the premises,

Doth order, adjudge and decree that said motion to dismiss be, and the same hereby is, overruled and denied, to which ruling of the court an exception is allowed the respondent.

And it further appearing that the respondent has, in open court, declined to plead further, and has elected to stand by said motion to dismiss,

It is further ordered, adjudged and decreed that the said respondent, D. B. Robertson, be, and he hereby is, directed to appear before the Railroad Labor Board, upon due notice by said board, at a time and place to be designated therein, there to testify, to give evi-[fol. 38] dence, and to give full, true and complete answer and response to any and all pertinent and relevant questions then and there propounded to him, relating to certain disputes consolidated for hearing before said board in Docket No. 4055, as Atchison, Topeka & Santa Fe Railway Company (Eastern, Western and Coast lines) et al., v. Brotherhood of Locomotive Engineers, and Brotherhood of Locomotive Firemen and Enginemen. An exception is allowed respondent to this ruling.

Enter this 13th day of November, A. D. 1924.

Enter.

James H. Wilkerson, District Judge

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF QUESTIONS OF JURISDICTION TO THE SUPREME COURT OF THE UNITED STATES—Filed Nov. 13, 1924

The District Court of the United States, for the Northern District of Illinois, Eastern Division, hereby certifies to the Supreme Court of the United States that on the sixth day of November, 1924, an order was entered in the above entitled cause, pursuant to the decision of said court, denying the Motion to Quash the service filed by the respondent. The District Court of the United States, for the Northern District of Illinois, Eastern Division, hereby further certifies to the Supreme Court of the United States that on the 13th day of November, 1924, an order was entered in the above entitled cause, pursuant to the decision of the said court, denying the Motion to Dismiss the petition, filed by the respondent.

[fol. 40] The respondent, appearing specially to the petition, by his solicitor, in his Motion to Quash the Service, specified the following reasons in support of said Motion:

That, as appeared on the face of the record, the respondent is an inhabitant of the City of Cleveland, situated in the Northern District of Ohio, and that service was executed by the marshal of the Northern District of Ohio, and respondent denied the jurisdiction of the court to issue and command the service of process against him and denied the jurisdiction of the court over him.

The respondent, without waiving the objections to the jurisdiction of the court over him, set out in his Motion to Quash the Service of the Summons, but specially insisting thereon, specified the following reasons in support of his motion to dismiss the petition:

That the petition invoked the exercise of judicial power in a proceeding which is not a case or controversy within the meaning of the second section of Article III of the Constitution; and that the court had no jurisdiction under any statute of the United States passed in conformity with the Constitution of the United States to entertain the said petition and grant the relief prayed therein.

A copy of said petition and of said motion to quash the service of summons, and a copy of said motion to dismiss the petition, and a copy of the orders and opinion of the court are contained in the record filed herein, to which reference is had for a more particular description thereof.

[fol. 41] And this court further certifies to the Supreme Court of the United States said questions of jurisdiction raised by said Motion to Quash Service of Summons and said Motion to Dismiss the Petition on the grounds aforesaid, viz:

First. Whether or not the service of summons should have been quashed, on the ground that the respondent is an inhabitant of the Northern District of Ohio and that the District Court for the Northern District of Illinois has no jurisdiction to summon the respondent to answer to the petition of the Railroad Labor Board filed in said court.

Second. Whether or not the petition of the Railroad Labor Board should have been dismissed, on the ground that the District Court for the Northern District of Illinois, has no jurisdiction under the Constitution of the United States and the statutes enacted in conformity therewith, which was invoked by said petition filed in said court, to order the respondent to attend as a witness and testify before said Railroad Labor Board.

James H. Wilkerson, United States District Judge.

Dated Nov. 13, 1924.

[File endorsement omitted.]

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Nov. 13, 1924

This cause coming on to be heard this 13th day of November, A. D. 1924, and the court having denied the motion to dismiss the petition filed herein, and the respondent having elected to stand by said motion to dismiss and having given notice of appeal in open court, and having requested that the court certify the questions of the jurisdiction of the court to the Supreme Court of the United States, and the court having signed a certificate of said questions of jurisdiction, which has been filed herein,

It is hereby further certified that these are the only questions of law upon the pleading and process for the decision of the Supreme Court of the United States and that the certificate was granted at the term in which the judgment in the cause was entered, and,

[fol. 43] It is further ordered, adjudged and decreed that the appeal of the respondent, D. B. Robertson, be allowed upon the said respondent giving bond conditioned as required by law in the sum of $500.00

Enter:

James H. Wilkerson, United States District Judge.

[fol. 44] Bond on Appeal for $500—Approved and filed Nov. 13, 1923; omitted in printing

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[fol. 45] In United States District Court

[Title omitted]

Stipulation re Transcript of Record—Filed Nov. 15, 1924

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the Clerk in preparing the record upon appeal to the Supreme Court of the United States shall omit from said record Exhibits A and B attached to the petition, but that except for the omission of said Exhibits a complete record shall be prepared.

Weymouth Kirkland, Solicitor for Petitioner, by Robert N. Golding. Donald R. Richberg, Solicitor for Respondent.

[File endorsement omitted.]

[fol. 46] In United States District Court

Clerk's Certificate

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Stipulation filed in this Court in the cause entitled Railroad Labor Board vs. D. B. Robertson, in Equity, No. 4282, as the same appear from the original records and files thereof, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 19th day of November, A. D. 1924.

John H. R. Jamar, Clerk. (Seal of Dist. Court U. S., Northern Dist. Illinois.)

Endorsed on cover: File No. 30,704. N. Illinois D. C. U. S. Term No. 739. D. B. Robertson, appellant, vs. Railroad Labor Board. Filed November 22nd, 1924. File No. 30,704.